

**RESOLUTION NO. 2011-2**

**A CAPITAL PROJECT AUTHORIZING RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AUTHORIZING THE PURCHASE OF SEVEN (7) POLICE VEHICLES AND ACCOMPANYING EMERGENCY EQUIPMENT FOR THE VILLAGE POLICE DEPARTMENT; AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO A LEASE PURCHASE RELATED TO THE SAME; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village received a proposal from TD Equipment Finance, Inc. (“TD”) for the purchase of 7 police vehicles and accompanying emergency equipment (the “Equipment”), a copy of which is attached as Exhibit “A” (the “Proposal”); and

**WHEREAS**, the Village Council desires to lease purchase the Equipment in substantially accordance with the terms of the Proposal; and

**WHEREAS**, the Village has taken the necessary steps, including those relating to any applicable legal bidding requirements, to arrange for the acquisition of the Equipment; and

**WHEREAS**, the Village does not reasonably anticipate that it will issue, and it has not budgeted the issuance of, tax-exempt obligations to be issued by it in the calendar year ending December 31, 2011, which will exceed \$10,000,000, including the obligations authorized herein; and

**WHEREAS**, the Village Council authorizes the Village Manager to enter into a lease purchase in substantially accordance with the terms of the Proposal, subject to the approval of the Village Attorney as to form and legal sufficiency; and

**WHEREAS**, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE COUNCIL  
OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:**

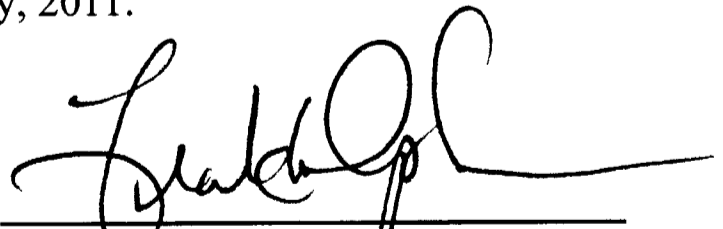
**Section 1.**     **Recitals Adopted.** That each of the recitals stated above is hereby adopted and confirmed.

**Section 2.**     **Capital Project Authorizing Resolution.** That pursuant to Village Charter Section 3.07(b), this Resolution shall constitute a Capital Project Authorizing Resolution. The Capital Project is the purchase of the Equipment for the Police Department in substantially accordance with the Proposal attached as Exhibit "A."

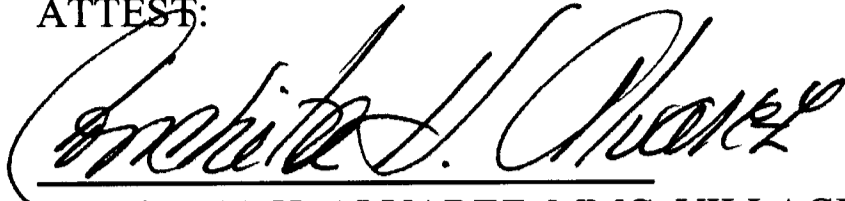
**Section 3.**     **Village Manager Authorized.** That the Village Manager is hereby authorized to enter into a lease purchase with TD for the purchase of the Equipment in substantially accordance with the terms of the Proposal attached as Exhibit "A," subject to the approval of the Village Attorney as to form and legal sufficiency. The lease shall be designated as a "qualified tax-exempt obligation", as defined in and for the purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

**Section 4.**     **Effective Date.** That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this 11th day of January, 2011.

  
MAYOR FRANKLIN H. CAPLAN

ATTEST:



CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



VILLAGE ATTORNEY



## EXHIBIT "A"



# Equipment Finance

CONFIDENTIAL

TD Equipment Finance, Inc.  
2059 Springdale Road  
Cherry Hill, NJ 08003

January 12, 2011

Village of Key Biscayne

88 W McIntyre  
Key Biscayne, FL 33149

### Proposal for 7 Police Vehicles & Accompanying Emergency Equipment

Dear Ms. Lourdes Reyes Abadin  
:

Thank you for this opportunity to bid on your request for a Municipal Lease Purchase ("Lease") in the amount of \$137,242.74. TD Equipment Finance, Inc. is pleased to offer the Lease subject to the following terms and conditions:

- |                                    |   |
|------------------------------------|---|
| 1. <b>Lessor</b>                   | TD Equipment Finance, Inc., or its designee ("Lessor")  |
| 2. <b>Lessee</b>                   | Village of Key Biscayne   |
| 3. <b>Equipment Description</b>    | Used Police Vehicles and emergency equipment  |
| 4. <b>Maximum Purchase Price</b>   | \$137,242.74 Plus accrued interest not included within annual payments listed below.  |
| 5. <b>Term</b>                     | a) <u>Commencement Date</u> : The lease shall commence upon Lessee's acceptance of the equipment, but in no event later than June 30, 2011<br>b) <u>Lease Term</u> : 3 Annual payments in advance<br>c) <u>Payment Amount</u> : \$46,656.43<br>d) <u>Payments Due</u> : compounded monthly<br>e) <u>Prepayment</u> : The lease may be prepaid at any time. without penalty, assuming no default event exists. |
| 6. <b>Initial Interest Period</b>  | Lessee will pay interim interest from the transaction funding date to the lease commencement date, as the structure requires. The rental will accrue at the daily interest rate equivalent.   |
| 7. <b>Tax-exempt Interest Rate</b> | 2.00%   |
| 8. <b>Index</b>                    | The tax-exempt rate will be set three (3) business days prior to the funding date (or such other date as determined by  |

Lessor and Lessee). The payment amount is based upon a 3 Year SWAP rate as of 1/14/2011. The payments will be adjusted on, or about, the commencement date to reflect any change in the index in effect at that time. Thereafter, the payments will be fixed for the duration of the lease term. SWAP rates are published daily in the Federal Reserve's H-15 Statistical Release report which may be found at [www.federalreserve.gov/releases/h15/update](http://www.federalreserve.gov/releases/h15/update).

9. **Purchase Option** Lessee will purchase all, but not less than all, of the equipment for \$1.00
10. **Structure** This lease shall be a lease intended as a security transaction. Titles, if any, shall list Lessee as owner and Lessor as lienholder.  
The Lease shall be subject to, and contain a non-appropriation clause; and, the Lessor will require bona fide best efforts by Lessee to include all payments under this master lease purchase in all its budget requests during each lease term in accordance with the terms of the Lease.
11. **Municipal Lease Purchase** This lease shall be considered a "Municipal Lease Purchase" by all parties. The Lessee will represent and warrant that it is a state or a political sub-division thereof, within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code") and that the lease will constitute an obligation of Lessee as described in Section 103(a) of the Code.
12. **Tax Status** This agreement is a qualified tax exempt obligation under Section 265 (b) (3) of the Internal Revenue Code of 1986. The interest portion of the payments under this Lease will not be includable in the gross income of the Lessor for federal income taxation purposes. The Lessee will supply at closing a tax opinion from qualified bond counsel.
13. **Legal Opinion** This transaction is subject to a legal opinion which must include a statement that the lease represents a valid and binding obligation of the Lessee.
14. **Costs & Expenses** *Choose one:*  
  
☐ Lessee shall be responsible for all fees, costs and disbursements incurred by Lessor in connection herewith, including, but not limited to all fees and disbursements of counsel to Lessor (if any), and all filing and search fees, up to \$1,800.00.
14. **Insurance** Lessee shall bear all risk of loss, damage and liability to the Equipment and Lessee shall be responsible to keep the Equipment insured or self-insured in a form indicated in section 16 of the sample the Lease.

15. **Warranties** Lessor shall lease the Equipment to Lessee without representation or warranty on an "AS IS BASIS". However, Lessor shall assign to Lessee all warranties, guarantees and services provided by the manufacturer(s) and/or vendor(s) to the extent that they can be assigned. LESSOR SHALL NOT BE RESPONSIBLE FOR PROVIDING ANY OF THE FOREGOING.
16. **Lease Documents** All legal matters, and all documents to be executed in connection herewith, shall be in satisfactory form and substance to Lessor, or Lessor's counsel, as may be the case, in its sole discretion.
17. **Lessor's Proposal/Financial Information** This lease proposal is subject to final credit review, and not, nor should it be construed as, a commitment by Lessor or any affiliate to enter into the proposed lease transaction. In order to complete its credit due diligence, Lessee shall provide Lessor with the following:
- Three years most current audited annual financial statements, and shall be furnished annually thereafter, if not otherwise published on the Lessee's website
  - Copy of meeting minutes
  - Copy of budget
  - Other supporting data as may be requested
18. **Authorization** Lessee acknowledges and agrees that Lessor may furnish all Lessee-presented information, financials, analysis, and related credit and review materials to its employees, counsel and agents, as well as its participants and/or assigns. Lessee authorizes Lessor to contact TD Bank, N.A. and other references of Lessee, and to order any and all credit checks and investigative reports, all as Lessor deems necessary in connection with the evaluation of the transaction.
19. **General** The Lease will be a "Triple Net Lease" in which the Lessee will be responsible for all expenses relating to the Equipment including, but not limited to, Equipment maintenance, insurance coverage, and all taxes (e.g. sales, use and personal property). The Lessor will carry any and all insurance coverage required by Lessor in accordance with the Lease. This proposal is not intended to and does not create any binding legal obligation on the part of either party. Lessor shall not be required to enter into the proposed lease transaction until the execution and receipt of this proposal; all necessary lease documentation completed in a form satisfactory to the Lessor, Lessor verifies the Equipment specifications including, but not limited to, model number,

number of units, installation costs, year of manufacturing and maintenance contracts; and approves the final Equipment configuration, acceptance of the financing; and full acceptance of the equipment by Lessee.

TD Equipment Finance, Inc. complies with Section 326 of the USA Patriot Act. This law mandates that we verify certain information about the Lessee while processing any lease request.

**20. Expiration**

This lease proposal shall expire, if not accepted by a qualified official by 5:00 pm, on January 20, 2011

Thank you for this opportunity to present our lease proposal to you. If these terms are acceptable to you, please sign and return it with the requested credit information. Please feel free to address any questions or comments with me. My contact information follows for your convenience.

Sincerely,

J. Robert Heron  
Regional Manager  
TD Equipment Finance, Inc.  
2059 Springdale Road  
Cherry Hill, NJ 08003

/encl.